

**In re: KATHY WEATHERLY, d/b/a RAINBOW KENNELS.**  
**AWA Docket No. 00-0023.**  
**Decision and Order filed on October 25, 2000.**

Frank Martin, Jr., for Complainant.  
Respondent, Pro se.  
*Decision and Order issued by James W. Hunt, Administrative Law Judge.*

### **Preliminary Statement**

This proceeding was instituted under the Animal Welfare Act ("Act"), as amended (7 U.S.C. § 2131 *et seq.*), by a Complaint filed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that the respondent violated the Act and the regulations issued thereunder (9 C.F.R. § 1.1 *et seq.*).

Copies of the Complaint and the Rules of Practice governing proceedings under the Act, 7 C.F.R. §§ 1.130-1.151, were served upon the respondent by certified mail. Respondent was informed in the letter of service that an Answer should be filed pursuant to the Rules of Practice and that failure to answer any allegation in the complaint would constitute an admission of that allegation.

Respondent failed to file an Answer addressing the allegations contained in the complaint within the time prescribed in the Rules of Practice. Therefore, the material facts alleged in the Complaint as set forth herein, which are admitted by respondent's failure to file an Answer pursuant to the Rules of Practice, are adopted and set forth herein as Findings of Fact.

This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice, 7 C.F.R. § 1.139.

### **Findings of Fact**

1. Kathy Weatherly, hereinafter referred to as respondent, is an individual doing business as Rainbow Kennels, whose mailing address is 885 Highway 14, Ellsworth, Kansas 67439.

2. The respondent, at all times material hereto, was operating as a dealer as defined in the Act and the regulations.

3. On February 28, 1996, APHIS inspected respondent's premises and found that respondent had failed to maintain programs of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine, in willful violation of section 2.40 of the regulations (9 C.F.R. § 2.40).

4. On February 28, 1996, APHIS inspected respondent's premises and records and found that the respondent had failed to maintain complete records showing the acquisition, disposition, and identification of animals, in willful

violation of section 10 of the Act (7 U.S.C. § 2140) and section 2.75(a)(1) of the regulations (9 C.F.R. § 2.75(a)(1)).

5. On February 28, 1996, APHIS inspected the respondent's facility and found the following willful violations of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)) and the standards specified below:

A. Housing facilities for dogs were not structurally sound and maintained in good repair so as to protect the animals from injury, contain the animals securely, and restrict other animals from entering (9 C.F.R. § 3.1(a));

B. The respondent failed to develop, document, and follow an appropriate plan to provide dogs with the opportunity for exercise and socialization (9 C.F.R. § 3.8); and

C. Excreta was not removed from primary enclosures daily and from under primary enclosures as often as necessary to prevent an excessive accumulation of feces, to prevent soiling of the dogs, and to reduce disease hazards, insects, pests and odors (9 C.F.R. § 3.11(a)).

6. On November 26, 1996, APHIS inspected respondent's premises and records and found that the respondent had failed to individually identify dogs, in willful violation of section 11 of the Act (7 U.S.C. § 2141) and section 2.50 of the regulations (9 C.F.R. § 2.50).

7. On November 26, 1996, APHIS inspected respondent's premises and records and found that the respondent had failed to maintain complete records showing the acquisition, disposition, and identification of animals, in willful violation of section 10 of the Act (7 U.S.C. § 2140) and section 2.75(a)(1) of the regulations (9 C.F.R. § 2.75(a)(1)).

8. On November 26, 1996, APHIS inspected the respondent's facility and found the following willful violations of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)) and the standards specified below:

A. Housing facilities for dogs were not structurally sound and maintained in good repair so as to protect the animals from injury, contain the animals securely, and restrict other animals from entering (9 C.F.R. § 3.1(a));

B. Dogs in outdoor housing facilities were not provided with adequate protection from the elements (9 C.F.R. § 3.4(b)); and

C. Primary enclosures for dogs were not kept clean and sanitized as required (9 C.F.R. §§ 3.11(a), (b)).

9. On March 6, 1997, APHIS inspected respondent's premises and found that respondent had failed to maintain programs of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine and failed to provide veterinary care to animals in need of care, in willful violation of section 2.40 of the regulations (9 C.F.R. § 2.40).

10. On March 6, 1997, APHIS inspected respondent's premises and records and found that the respondent had failed to individually identify dogs, in willful violation of section 11 of the Act (7 U.S.C. § 2141) and section 2.50 of the

regulations (9 C.F.R. § 2.50).

11. On March 6, 1997, APHIS inspected the respondent's facility and found the following willful violations of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)) and the standards specified below:

A. Housing facilities for dogs were not structurally sound and maintained in good repair so as to protect the animals from injury, contain the animals securely, and restrict other animals from entering (9 C.F.R. § 3.1(a));

B. Excreta was not removed from under primary enclosures as often as necessary to prevent an excessive accumulation of feces, to prevent soiling of the dogs and to reduce disease hazards, insects, pests and odors (9 C.F.R. § 3.11(a)); and

C. Primary enclosures for dogs were not kept clean and sanitized as required (9 C.F.R. §§ 3.11(a), (b)).

12. On June 26, 1997, APHIS inspected the respondent's facility and found the following willful violations of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)) and the standards specified below:

A. Housing facilities for dogs were not structurally sound and maintained in good repair so as to protect the animals from injury, contain the animals securely, and restrict other animals from entering (9 C.F.R. § 3.1(a));

B. Excreta was not removed from under primary enclosures as often as necessary to prevent an excessive accumulation of feces, to prevent soiling of the dogs and to reduce disease hazards, insects, pests and odors (9 C.F.R. § 3.11(a)); and

C. Primary enclosures for dogs were not kept clean and sanitized as required (9 C.F.R. §§ 3.11(a), (b)).

13. On February 11, 1998, APHIS inspected the respondent's facility and found the following willful violations of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)) and the standards specified below:

A. Housing facilities for dogs were not structurally sound and maintained in good repair so as to protect the animals from injury, contain the animals securely, and restrict other animals from entering (9 C.F.R. § 3.1(a));

B. Excreta and food waste were not removed from primary enclosures daily, and from under primary enclosures as often as necessary to prevent an excessive accumulation of feces and food waste, to prevent soiling of the dogs and to reduce disease hazards, insects, pests and odors (9 C.F.R. § 3.11(a)); and

C. Primary enclosures for dogs were not kept clean and sanitized as required (9 C.F.R. §§ 3.11(a), (b)).

14. On October 5, 1998, respondent refused to allow Animal and Plant Health Inspection Services employees to conduct a complete inspection of her animal facilities, in willful violation of section 16 of the Act (7 U.S.C. § 2146) and section 2.126 of the regulations (9 C.F.R. § 2.126).

15. On October 20, 1998, APHIS inspected the respondent's facility and

found the following willful violations of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)) and the standards specified below:

A. Housing facilities for dogs were not structurally sound and maintained in good repair so as to protect the animals from injury, contain the animals securely, and restrict other animals from entering (9 C.F.R. § 3.1(a));

B. Excreta and food waste were not removed from primary enclosures daily, and from under primary enclosures as often as necessary to prevent an excessive accumulation of feces and food waste, to prevent soiling of the dogs and to reduce disease hazards, insects, pests and odors (9 C.F.R. § 3.11(a)); and

C. Primary enclosures for dogs were not kept clean and sanitized as required (9 C.F.R. §§ 3.11(a), (b)).

16. On November 4, 1998, the respondent operated as a dealer as defined in the Act and the regulations, without being licensed, in willful violation of section 4 of the Act (7 U.S.C. § 2134) and section 2.1 of the regulations (9 C.F.R. § 2.1) by selling at least 10 dogs to a dealer for resale for use as pets.

17. On November 17, 1998, the respondent operated as a dealer as defined in the Act and the regulations, without being licensed, in willful violation of section 4 of the Act (7 U.S.C. § 2134) and section 2.1 of the regulations (9 C.F.R. § 2.1) by selling at least one dog to a dealer for resale for use as a pet.

18. On December 18, 1998, the respondent operated as a dealer as defined in the Act and the regulations, without being licensed, in willful violation of section 4 of the Act (7 U.S.C. § 2134) and section 2.1 of the regulations (9 C.F.R. § 2.1) by selling at least 23 dogs to a dealer for resale for use as pets.

### **Conclusions**

1. The Secretary has jurisdiction in this matter.
2. By reason of the facts set forth in the Findings of Fact above, the respondent has violated the Act and the regulations promulgated under the Act.
3. The following Order is authorized by the Act and warranted under the circumstances.

### **Order**

1. Respondent, her agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the regulations and standards issued thereunder, and in particular, shall cease and desist from:

(a) Failing to construct and maintain housing facilities for animals so that they are structurally sound and in good repair in order to protect the animals from injury, contain them securely, and restrict other animals from entering;

(b) Failing to provide animals with adequate shelter from the elements;

(c) Failing to maintain primary enclosures for animals in a clean and sanitary condition;

(d) Failing to establish and maintain programs of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine;

(e) Failing to individually identify animals, as required;

(f) Failing to maintain records of the acquisition, disposition, description, and identification of animals, as required; and

(g) Operating as a dealer without a license which is required under the Act and regulations.

2. The respondent is assessed a civil penalty of \$7,500.00, which shall be paid by a certified check or money order made payable to the Treasurer of United States.

3. The respondent is disqualified from becoming licensed for one year and continuing thereafter until she demonstrates to the Animal and Plant Health Inspection Service that they are in full compliance with the Act, the regulations and standards issued thereunder, and this order, including payment of the civil penalty imposed herein.

Copies of this decision shall be served upon the parties.

[This Decision and Order became final December 7, 2000.]

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